

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

*MIRROW*

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**FILE:** B-210259

**DATE:** September 2, 1983

**MATTER OF:** Weardco Construction Corp.

**DIGEST:**

1. Where doubt exists concerning the date the protester became aware of the basis of protest, GAO resolves doubt in favor of the protester.
2. Protest against ambiguity in RFP, alleged as the result of an award, is timely filed when filed 10 working days after award under seemingly unambiguous RFP.
3. Protester's allegation that RFP is ambiguous is without merit because RFP is not subject to two reasonable interpretations.
4. Where protester disagrees with procuring agency's technical evaluation of successful proposal vis-a-vis its proposal without producing sufficient evidence to establish evaluation was unreasonable, protester has failed to affirmatively prove its case.
5. Allegation of prejudicial motives or discrimination against protester is not supported where based on inference or supposition.

Weardco Construction Corporation (Weardco) protests the award of a contract to Actus Corporation (Actus) for 200 manufactured/factory-built housing units at Fort Irwin, California, under request for proposal (RFP) No. DACA05-82-R-0090, issued by the United States Army Corps of Engineers (Army). Weardco alleges the award to Actus was improper because the Actus proposal fails to conform to the requirements of the RFP.

We deny the protest.

The following provisions of the RFP are relevant to the protest.

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Paragraph 1.2 of the RFP states:

"SITE PLANNING. This project consists of 200 manufactured/factory built units on approximately 70 acres of land. Imaginative site design is encouraged. However, the site boundaries and project composition and thus the gross density are fixed."

The 70 acres prescribed for development consist of two parcels--one parcel is 55.4 acres and the other is 14.6 acres.

Section F.I.(a) of the technical evaluation manual (for use by the evaluation team only), which also discusses density, states:

"The project density in housing units per gross acre is pre-established by the Project Scope and Composition (number of units and number of bedrooms) in relation to total acreage prescribed for development."

In addition to the above requirements, paragraph 1.1.3.2 states:

"All utilities except the electrical distribution systems shall be extended along the Collector Road A."

When the protest was initially filed, Weardco complained that the Actus proposal should have been rejected because it only develops 55.4 acres and does not extend utilities along the entire length of collector road "A." Weardco also stated that its proposal offering a single family housing unit design was superior to the multifamily, stacked design offered in the Actus proposal. On February 1 and February 9, 1983, Weardco supplemented the protest. Weardco alleged that the proposal violates the mandatory circulation for habitable rooms, the exterior walls and interior insulation fire rating, the site grading and drainage requirements, ceiling height and bedroom design requirements. Finally, in comments to the Army's report, Weardco contends that if offerors were not required to develop 70 acres, then the RFP was ambiguous, which resulted in offerors having competed on an unequal basis.

The Army's response is that the RFP neither requires the development of the total 70 acres nor requires offerors

to extend utilities along the entire length of collector road "A"; therefore, the Actus proposal reasonably conforms to the RFP. The Army contends that the relative merits of the Actus proposal vis-a-vis the Weardco proposal are technical judgments of the evaluation team, which our Office will not disturb, unless the protester can clearly demonstrate the judgment was arbitrary or in violation of procurement laws and regulations (citing Blurton Banks & Associates, Inc., B-205865, August 10, 1982, 82-2 CPD 121). The Army argues the Weardco protest fails to demonstrate that the technical evaluation was unreasonable. On the issues filed after the original protest, including the alleged ambiguity, the Army contends Weardco is untimely.

In connection with the timeliness issue, the Army states Weardco was furnished an engineering report which denied its protest allegations to the Army on January 11, and Weardco met with agency officials to resolve the protest on January 17. The Army contends the last date for filing additional protest grounds should have been January 31. Moreover, the Army believes the ambiguity allegation should have been filed prior to the closing date for the receipt of proposals. 4 C.F.R. § 21.2(b)(1) and (2) (1983). Weardco, however, responds that the issues are substantially related to the original protest grounds and were timely filed. Weardco states the protest grounds were discovered after the January 17 meeting, from information the agency furnished on January 20 and February 3.

We resolve doubt surrounding the timeliness of a protest in favor of the protester. Kunert Electric, B-204439, June 8, 1982, 82-1 CPD 551. Based on our examination of the engineering report and the record of the January 17 meeting, we cannot conclusively find that Weardco became aware of the additional protest grounds before January 17. As to the alleged ambiguity, the gist of the argument was filed in the original protest. We have found that where an ambiguity is alleged as the result of an award under seemingly unambiguous requirements, a protester's protest filed 10 days after the award is timely. See Honeywell, Inc., B-199024, August 21, 1981, 80-2 CPD 137. We therefore will examine the merits of the protest.

The determination of the relative merits or technical acceptability of proposals, particularly with respect to technical considerations, is primarily a matter of administrative discretion. Blurton Banks & Associates, Inc., supra. Our function is not to evaluate proposals anew and make a determination of the relative technical merits. That

since it must bear the burden of any difficulties resulting from a defective evaluation. In light of this, we have held that procuring officials enjoy a reasonable degree of discretion in evaluating proposals, which we will not disturb unless shown to be arbitrary or in violation of procurement laws and regulations. The protester's mere disagreement with the evaluation does not in itself render the evaluation unreasonable. Dynalelectron Corporation, B-199741, July 31, 1981, 81-2 CPD 70.

Weardco contends that interpreting the site planning provision to require development of all of the 70 acres is consistent with the Army's prior interpretation of a solicitation for turnkey housing currently under construction at Fort Irwin and that other military departments also interpret turnkey housing project solicitations in the same manner. In Weardco's view, a fixed gross density requires a project density of 2.86 units/acres--200 units divided by 70 acres. Weardco contends that in light of the prior history of turnkey projects, it justifiably construed the site planning provision to require developing the entire 70 acres. Weardco asserts that its belief was reinforced when the Army did nothing in response to its letter dated November 15, 1982, which indicated it believed the RFP prohibited partial site development. Therefore, Weardco argues that the Army's acceptance of the Actus proposal without amending the RFP, despite the fact that it failed to provide for development of 70 acres and to extend utilities along the entire length of collector road "A," was improper.

We disagree. An ambiguity exists when provisions of a solicitation are subject to two reasonable interpretations. The interpretation Weardco alleges was reasonable is based on other projects. We find this argument unpersuasive. While the relevant provision of the RFP states that "the site boundaries and project composition and thus the gross density are fixed," gross density is not defined or stated in terms of units per acre as the protester interpreted it. The only precise figures stated in this provision are the acres (70) and the units (200). While the language could have been clearer as to the meaning of gross density, we do not believe it reasonably can be read as requiring a precise density figure of 2.86 units per acre rather than the 3.63 density resulting from the awardee's plan. This is especially true since tot lots, open spaces, and recreation areas were required in addition to housing units. A fixed density of 2.86, not stated in the RFP, but which Weardco arrived at by dividing the number of acres by the 200 units, would emasculate the other provisions in the RFP that encourage creative design, permit several different

housing unit designs and encourage preserving the natural setting of the sites. We therefore conclude that offerors competed on an equal basis because there is nothing unreasonable about the Army's conclusion that the Actus proposal conforms to the site planning requirement. See JVAN, Inc., B-202357, August 28, 1981, 81-2 CPD 184.

Even if we assume that a November 15 letter from Weardco put the Army on notice that Weardco was interpreting the site planning provision to prohibit partial site development, the Army did not act improperly in not pointing out the erroneous interpretation which allegedly caused Weardco to price its proposal higher. We have held that where the meaning of the proposal is clear and the proposal contains a weakness which is the result of the proposer's own lack of competence or inventiveness, the contracting officer is not required to point out such a weakness. Pioneer Contract Service, Inc., B-197245, February 19, 1981, 81-1 CPD 107.

With respect to the utilities issue, Weardco alleges it sought to clarify whether utilities could be extended through the project site like Actus proposed, but agency officials informed Weardco that the extension of utilities along the entire length of collector road "A" was a mandatory requirement. Therefore, Weardco argues that this is another example of unequal treatment. The Army, however, questions whether the statements were even made because it interprets the RFP to only require that utilities be extended along collector road "A" past the proposed school site. On this point, we agree with the protester, the utilities requirement is confusing. Nevertheless, we note the Army has included copies of the project drawings that were furnished with the RFP, which support the Army's interpretation. Further, the Army estimates Weardco could have saved approximately \$20,000 to \$30,000 by running utilities through the site but would have needed to decrease the proposal by \$1,250,000 to have even tied the cost/point score of the Actus proposal. Given these factors, we find that Weardco was not prejudiced since it is reasonable to assume that running the utilities through the site would not have improved Weardco's competitive standing. See HSA/Multichem, B-202421, August 11, 1981, 81-2 CPD 118.

On the remaining issues, we find Weardco has failed to demonstrate that the evaluation of the Actus proposal was unreasonable. The question of whether Actus' proposed storm and drainage system is properly coordinated with the surrounding properties is a discretionary decision for the evaluation team. The fact that Weardco disagrees with the

evaluation team's decision in this regard does not render it unreasonable. Moreover, our examination of the Actus proposal reveals that it conforms to all the material dimensions specified in the RFP. We find no support for the allegations that the ceiling height requirement was violated or that the bedrooms will not accommodate twin beds. As to the circulation requirement, the proposal reasonably conforms to the RFP.

We note, as the Army points out, that in the turnkey concept of procurement, the Government does not provide comprehensive design specifications, but rather relies on the offerors to use their inventiveness in designing buildings to meet certain stated requirements. Joseph Legat Architects, B-187160, December 13, 1977, 77-2 CPD 458. In light of this standard, we cannot conclude that the Army acted unreasonably by determining that the Actus proposal which offered a multifamily, stacked design on 55.4 acres was superior to the Weardco proposal.

Finally, Weardco submits a congressional report, which discusses manufactured/factory built housing at Fort Irwin, in an effort to demonstrate that the procuring officials discriminated against its single family, manufactured housing proposal. While this report indicates that past procurements of housing at fort Irwin had favored factory-built housing over the manufactured-type produced by Weardco, there is nothing in the report that indicates any discrimination in the evaluation of Weardco's proposal. Unfair or prejudicial motives will not be attributed to procurement officials on the basis of inference or supposition. Where the written record fails to demonstrate bias, the protester's allegations are properly to be regarded as mere speculation. Sperry Rand Corporation, 56 Comp. Gen. 312, 317 (1977), 77-1 CPD 77.

Accordingly, the protest is denied.

*for Harry R. Van Cleave*  
Comptroller General  
of the United States